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FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7066
DATE COMPLAINT FILED: May 16, 2016
DATE OF NOTIFICATION: May 20, 2016
LAST RESPONSE RECEIVED: August 15, 2016
DATE ACTIVATED: December 20, 2016

EXPIRATION OF SOL: Earliest: February 5, 2021
Latest: December 8, 2021

ELECTION CYCLE: 2016

COMPLAINANT:

Rebecca Neufeld

RESPONDENTS:

Hillary for America and Jose Villarreal in his
official capacity as treasurer

**RELEVANT STATUTE AND
REGULATIONS:**

52 U.S.C. § 30116(f)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 110.9

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Hillary for America and Jose Villarreal, in his official capacity as treasurer ("the Committee"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations by accepting excessive contributions from 70 individuals in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 103.3(b)(3), 110.9. All but one of the individuals contributed in permissible amounts, or had their excessive contributions timely reattributed, redesignated, or refunded. As to the individual whose excessive contributions were cured late, we recommend the Commission dismiss the allegations based on the *de minimis* nature of the violation and the Committee's remedial actions.

II. FACTUAL BACKGROUND

Hillary for America is the principal campaign committee for Hillary Clinton's 2016 Presidential campaign.¹ The Complaint alleges that between April 12, 2015, and March 31, 2016, the Committee committed 217 violations of the Act by accepting a total of \$273,503 in excessive contributions from 70 individual contributors residing in fifteen ZIP codes in southern California.²

The alleged excessive contributions were received both as individual contributions to the Committee and as allocations from individual contributions to Hillary Victory Fund ("HVF").³ HVF was established as a joint fundraising committee; participants included the Committee, the Democratic National Committee ("DNC"), and 38 state Democratic Party committees.⁴ For contributions to HVF made before the Presidential primary election, the first \$2,700 of each individual contribution to HVF were allocated to the Committee's primary election campaign fund and the second \$2,700 were allocated to the Committee's general election campaign fund, with any remainder being transferred to the DNC and state Democratic Party committees.⁵ For individual contributions to HVF made after the Presidential primary, only the first \$2,700 were allocated to the Committee.⁶

¹ Hillary for America Statement of Organization (Apr. 13, 2015).

² See Compl. at 1, 3-15.

³ *Id.*

⁴ See FEC Form 1, Statement of Organization, Hillary Victory Fund (amended July 1, 2016).

⁵ Factual & Legal Analysis at 1-2, MUR 7061 (Hillary for America) ("F&LA").

⁶ *Id.* at 2.

1 The Committee denies the allegations and states that it had measures in place to handle
2 excessive contributions properly.⁷ The Committee suggests the Complainant does not
3 understand that the primary and general elections are separate elections for purposes of
4 limitations on contributions, and committees may cure excessive contributions by timely
5 redesignating, reallocating, or refunding them.⁸

6 The Committee explains that 64 of the 70 contributors did not exceed the contribution
7 limits at all, and four individuals made excessive contributions that the Committee refunded or
8 reallocated. The Committee maintains that two individuals appeared to exceed the \$2,700 per
9 election limit, but this appearance was due to reporting errors, which the Committee corrected in
10 amended reports.⁹

11 **III. LEGAL ANALYSIS**

12 Under the Act, an individual may not make a contribution to a candidate with respect to
13 any election in excess of the legal limit, which was \$2,700 per election during the 2016 election
14 cycle.¹⁰ A primary election and a general election are each considered a separate "election"
15 under the Act, and the contribution limits apply separately to each election.¹¹ Candidates and
16 political committees are prohibited from knowingly accepting excessive contributions.¹² When a

⁷ Resp. at 2.

⁸ *Id.* at 2-3.

⁹ See *Id.* at 2, Ex. A (listing the 64 individuals and providing excerpts from various Commission disclosure reports documenting all contributions by each individual), *Id.* at 2, Exs. B-C (records of the excessive contributions and subsequent refunds for two individuals), *Id.* at 2, Ex. C (records of the excessive contributions and subsequent reallocations for two individuals), and *Id.* at 3, Exs. D-E (records of the reported excessive contributions and subsequent amendments correcting election designations).

¹⁰ See 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

¹¹ See 52 U.S.C. §§ 30101(1)(A) and 30116 (a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

¹² See 52 U.S.C. § 30116(f).

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1 committee receives an excessive contribution, the committee must, within 60 days of the
2 contribution's receipt, either refund the excessive portion of the contribution or obtain a
3 redesignation or reattribution from the contributor.¹³ Contributions to a joint fundraising
4 committee are subject to regulations governing the allocation of funds up to the total limits of all
5 the participants to the joint fundraising agreement.¹⁴

6 A review of the Committee's disclosure reports confirms that 64 of the 70 identified
7 individuals did not make excessive contributions, and five more made excessive contributions
8 that the Committee timely refunded, redesignated, or reallocated. However, the Committee
9 failed to timely refund, redesignate, or reallocate excessive contributions totaling \$845 from one
10 individual.¹⁵

11 Given the limited scope of the violation, the small amount at issue, and the Committee's
12 remedial actions, we recommend the Commission exercise its prosecutorial discretion and
13 dismiss the Complaint's allegations.¹⁶

¹³ See 11 C.F.R. § 103.3(b)(3).

¹⁴ See 11 C.F.R. § 102.17.

¹⁵ The Committee's reports reveal that one contributor exceeded the aggregate contribution limit for the primary election by \$845 via contributions to HVF on Feb. 5, 2016; Feb 24, 2016; Feb. 29, 2016; and Mar. 11, 2016. The excessive contributions were reallocated on Jul. 31, 2016.

¹⁶ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

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IV. RECOMMENDATIONS


1. Dismiss the allegation that Hillary for America and Jose Villarreal, in his official capacity as treasurer, violated 52 U.S.C. § 30116(f), 11 C.F.R. §110.9, and 11 C.F.R. § 103.3(b)(3);
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letters; and
4. Close the file.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement


Stephen Gura
Deputy Associate General Counsel


Lynn Y. Tran
Assistant General Counsel


Ray L. Wolcott
Attorney

Attachment
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Hillary for America and Jose Villarreal MUR 7066
in his official capacity as treasurer

I. INTRODUCTION

The Complaint alleges that Hillary for America and Jose Villarreal, in his official capacity as treasurer ("the Committee"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations by accepting excessive contributions from 70 individuals in violation of 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 103.3(b)(3), 110.9. After reviewing the record, the Commission dismisses the allegation that the Committee violated 52 U.S.C. § 30116(f), and 11 C.F.R. §§ 103.3(b)(3), 110.9 by accepting and failing to timely cure excessive contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Analysis

Hillary for America is the principal campaign committee for Hillary Clinton's 2016 Presidential campaign.¹ The Complaint alleges that between April 12, 2015, and March 31, 2016, the Committee committed 217 violations of the Act by accepting a total of \$273,503 in excessive contributions from 70 individual contributors residing in fifteen ZIP codes in southern California.²

The alleged excessive contributions were received both as individual contributions to the Committee and as allocations from individual contributions to Hillary Victory Fund ("HVF").³ HVF was established as a joint fundraising committee; participants included the Committee, the

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² See Compl. at 1, 3-15.

³ *Id.*

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2 contributions to HVF made before the Presidential primary election, the first \$2,700 of each
3 individual contribution to HVF were allocated to the Committee's primary election campaign
4 fund and the second \$2,700 were allocated to the Committee's general election campaign fund,
5 with any remainder being transferred to the DNC and state Democratic Party committees.⁵ For
6 individual contributions to HVF made after the Presidential primary, only the first \$2,700 were
7 allocated to the Committee.⁶

8 The Committee denies the allegations and states that it had measures in place to handle
9 excessive contributions properly.⁷ The Committee suggests the Complainant does not
10 understand that the primary and general elections are separate elections for purposes of
11 limitations on contributions, and that committees may cure excessive contributions by timely
12 redesignating, reallocating, or refunding them.⁸ The Committee explains that 64 of the 70
13 contributors did not exceed the contribution limits at all, and four individuals made excessive
14 contributions that the Committee timely refunded or reallocated. The Committee maintains that
15 two individuals appeared to exceed the \$2,700 per election limit, but this appearance was due to
16 reporting errors, which the Committee corrected in amended reports.⁹

⁴ See FEC Form 1, Statement of Organization, Hillary Victory Fund (amended July 1, 2016).

⁵ Factual & Legal Analysis at 1-2, MUR 7061 (Hillary for America) ("F&LA").

⁶ *Id.* at 2.

⁷ Resp. at 2.

⁸ *Id.* at 2-3.

⁹ See *Id.* at 2, Ex. A (listing the 64 individuals and providing excerpts from various Commission disclosure reports documenting all contributions by each individual), *Id.* at 2, Exs. B-C (records of the excessive contributions and subsequent refunds for two individuals), *Id.* at 2, Ex. C (records of the excessive contributions and subsequent reallocations for two individuals), and *Id.* at 3, Exs. D-E (records of the reported excessive contributions and subsequent amendments correcting election designations).

B. Legal Analysis

Under the Act, an individual may not make a contribution to a candidate with respect to any election in excess of the legal limit, which was \$2,700 per election during the 2016 election cycle.¹⁰ A primary election and a general election are each considered a separate "election" under the Act, and the contribution limits apply separately to each election.¹¹ Candidates and political committees are prohibited from knowingly accepting excessive contributions.¹² When a committee receives an excessive contribution, the committee must, within 60 days of the contribution's receipt, either refund the excessive portion of the contribution or obtain a redesignation or reattribution from the contributor.¹³ Contributions to a joint fundraising committee are subject to regulations governing the allocation of funds up to the total limits of all the participants to the joint fundraising agreement.¹⁴

A review of the Committee's disclosure reports confirms that 64 of the 70 identified individuals did not make excessive contributions, and five more made excessive contributions that the Committee timely refunded, redesignated, or reallocated. However, the Committee failed to timely refund, redesignate, or reallocate excessive contributions totaling \$845 from one individual.¹⁵

Given the limited scope of the violation, the small amount at issue, and the Committee's remedial actions, and the Commission's priorities, relative to other matters pending on the

¹⁰ See 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

¹¹ See 52 U.S.C. §§ 30101(1)(A) and 30116 (a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

¹² See 52 U.S.C. § 30116(f).

¹³ See 11 C.F.R. § 103.3(b)(3).

¹⁴ See 11 C.F.R. § 102.17.

¹⁵ The Committee's reports reveal that one contributor exceeded the aggregate contribution limit for the primary election by \$845 via contributions to HVF on Feb. 5, 2016; Feb 24, 2016; Feb. 29, 2016; and Mar. 11, 2016. The excessive contributions were reallocated on Jul. 31, 2016.

- 1 Enforcement docket, the Commission exercises its prosecutorial discretion and dismisses this
- 2 matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).